

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

THOMAS SOURAN, KELLY REARDON,
ROY WILKIE, CARMEN GONZALEZ,
LOUIS RAMZY, ADAM SMITH, and
MICAH LEWIS, individually, and on behalf of
all other similarly situated individuals,

Plaintiffs,

v.

GRUBHUB HOLDINGS INC. and
GRUBHUB INC.,

Defendants.

Case No. 1:16-cv-6720

Judge Charles R. Norgle, Sr.

**DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED
COMPLAINT OR, IN THE ALTERNATIVE, STAY ALL PROCEEDINGS**

Pursuant to Fed. R. Civ. Proc. 12(b)(6) and Section 3 of the Federal Arbitration Act (“FAA”), 9 U.S.C. § 3, Defendants GrubHub Holdings Inc. and GrubHub Inc. (“Defendants”) hereby move for an order dismissing or, in the alternative, staying the claims asserted by Plaintiffs Thomas Souran, Kelly Reardon, Roy Wilkie, Louis Ramzy, Adam Smith and Micah Lewis (collectively, the “Named Plaintiffs”) in their First Amended Collective and Class Action Complaint (“FAC”). This motion is brought on the following two grounds.

First, the Named Plaintiffs and all others who have thus far filed consents to opt into this litigation (collectively, the “Opt In Plaintiffs”) have entered into one or more Delivery Service Provider Agreements (“DSPAs”) with Defendants. Those DSPAs require that the claims asserted in the FAC be resolved through mandatory arbitration before the American Arbitration Association (“AAA”), and that such arbitrations be conducted exclusively on an individual basis. Because the claims asserted by the Named and Opt In Plaintiffs are “referable to arbitration”

under Section 3 of the FAA, those claims should be dismissed or, in the alternative, stayed pending the completion of individual arbitrations pursuant to the arbitration provisions of the DSPAs.

Second, the Named Plaintiffs Souran, Wilkie, Ramzy, Reardon and Smith, as well as the Opt In Plaintiffs Annecia Cassanova, Joel Collins, Jason France, Jackson Fulbright and Edward Wagner (collectively, the “Waiver Plaintiffs”), have all previously initiated individual arbitration proceedings against Defendants in which they assert the same claims for relief, based on the same theories of recovery, as are asserted in the FAC. Those arbitration proceedings are pending before the AAA in various cities across the country, and were voluntarily initiated in each instance by one of the Waiver Plaintiffs. Defendants have submitted responses to each of the Waiver Plaintiffs’ arbitration demands, and the subject arbitrations have proceeded in most cases through laborious and time-consuming arbitrator selections, scheduling conferences and orders, and substantial discovery, and done so at significant costs to Defendants in terms of AAA administration, arbitrator and attorneys’ fees. Under settled law, the Waiver Plaintiffs have forfeited their right to contest the arbitrability of their claims as asserted in the FAC, and those claims should therefore be dismissed.

A detailed explanation of the bases for this motion is set forth in Defendants’ contemporaneously filed Memorandum in Support of Motion to Dismiss Plaintiffs’ First Amended Collective and Class Action Complaint or, in the Alternative, Stay All Proceedings.

Counsel for the parties have met and conferred regarding this motion, and Plaintiffs have not provided their consent of non-objection to the relief sought by Defendants.

WHEREFORE, Defendants respectfully request that the Court grant their motion and dismiss Plaintiffs' claims or, in the alternative, stay all proceedings, and order such other relief as the Court deems just and proper.

Date: August 29, 2016

Respectfully submitted,

GRUBHUB HOLDINGS INC. and GRUBHUB
INC.

By: /s/ Henry Pietrkowski
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CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2016, I filed the aforementioned **DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT OR, IN THE ALTERNATIVE, STAY ALL PROCEEDINGS** on behalf of Defendants GrubHub Holdings Inc. and GrubHub Inc. with the Clerk of the United States District Court for the Northern District of Illinois, using the CM/ECF system which automatically served all counsel of record.

By: /s/ Henry Pietrkowski